

**Before the  
FEDERAL COMMUNICATIONS Commission  
Washington, D.C. 20554**

|   |   |                  |
|---|---|------------------|
| In the Matter of                            | ) |                  |
|   | ) |                  |
| Inquiry Concerning the Deployment of        | ) |                  |
| Advanced Telecommunications                 | ) |                  |
| Capability to All Americans in a Reasonable | ) | CC Docket 98-146 |
| And Timely Fashion, and Possible Steps      | ) |                  |
| To Accelerate Such Deployment Pursuant      | ) |                  |
| To Section 706 of the                       | ) |                  |
| Telecommunications Act of 1996              | ) |                  |

**REPLY COMMENTS OF THE COMPETITION POLICY INSTITUTE**

Ronald J. Binz, President  
Debra R. Berlyn, Executive Director  
Joshua M. Bobeck, Policy Counsel  
1156 15th St., NW, Suite 520  
Washington, D.C. 20005  
Phone: 202-835-0202  
Fax: 202-835-1132  
[www.cpi.org](http://www.cpi.org)

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## REPLY COMMENTS OF THE COMPETITION POLICY INSTITUTE

The Competition Policy Institute (“CPI”)<sup>1</sup> submits these reply comments in response to the Federal Communications Commission’s (“Commission”) *Notice of Inquiry*<sup>2</sup> in the above captioned docket. Our comments focus on the Notice’s request for comments on how the Commission can accelerate deployment of advanced telecommunications capability to all Americans. To stimulate deployment of advanced services, we urge the Commission to continue its pro-competitive policies and eliminate barriers that have the effect of inhibiting competition in telecommunications generally.

### I. INTRODUCTION AND SUMMARY

In the *First Report* the Commission determined that “deployment of advanced telecommunications capability appears to be timely and reasonable,” but cautioned that its conclusions were based partly on “assumptions and predictions regarding the future” and that its method for determining deployment was imprecise.<sup>3</sup> The Commission also affirmed its commitment to promoting the deregulatory and pro-competitive goals of the Telecommunications Act of 1996 (“1996 Act”) emphasizing that its role “is not to pick winners and losers, or to select the best technology to meet consumer demand.”<sup>4</sup> Instead, the

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<sup>1</sup> CPI is an independent, non-profit organization that advocates state and federal policies to promote competition in telecommunications and energy services in ways that benefit consumers.

<sup>2</sup> *In the Matter of Inquiry concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion and Steps to Accelerate Such Deployment Pursuant To Section 706 of the Telecommunications Act of 1996*, CC Docket 98-146, *Notice of Inquiry*, FCC 99-5, rel. Feb. 18, 2000. (“*Second NOI*”).

<sup>3</sup> *In the Matter of Inquiry concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion and Steps to Accelerate Such Deployment Pursuant To Section 706 of the Telecommunications Act of 1996*, CC Docket 98-146, *Report*, FCC 99-5, rel. Feb. 2, 1999. at ¶ 7 (“*First Report*”).

<sup>4</sup> *First Report* ¶ 5.

Commission concluded its role was to “rely as much as possible on free markets and private enterprise” to foster the development of advanced telecommunications capability.<sup>5</sup>

In the *Second NOI*, the Commission finds that deployment of advanced telecommunications capability has increased substantially since the *First Report* and that increased investment in high-speed services will lead to accelerated deployment.<sup>6</sup> Despite these positive signs, the Commission acknowledges the concern among policymakers and other observers that access to advanced telecommunications capability in rural areas and inner cities is not comparable to access elsewhere. In view of that concern, the Commission intends to determine where advanced telecommunications capability has not been deployed, re-examine its conclusion that deployment is timely and reasonable, and consider what actions it can take to spur deployment.

In comments filed in response to the *Second NOI*, the overwhelming majority of respondents suggest that current deployment of advanced telecommunications capability is reasonable and timely.<sup>7</sup> While CPI is aware that “assertions of companies regarding their plans for deployment, while helpful, may not ultimately prove to be accurate,”<sup>8</sup> in this case, we tend to agree with the companies’ conclusions. CPI agrees because we are realistic about the progress we can reasonably expect in a nascent market. At this early stage of development, both the progress of deployment and the penetration of advanced services will necessarily be small in absolute terms. For us, this means that the Commission should err on the side of not interfering in the development of this young market. Instead, during this period it is critical that the

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<sup>5</sup> *Id.*

<sup>6</sup> *Second NOI* ¶ 3.

<sup>7</sup> See ALTS comments p. 3, AT&T comments p. 3, National Rural Telecommunications Association comments p. 9, US West comments p. 4.

<sup>8</sup> *First Report* ¶ 7.

Commission maintain its course of pro-investment and pro-competitive policies that stimulate competition for all telecommunications services.

While we think the Commission is basically on the right course, it can do more to accelerate the pace of telecommunications competition generally. We are confident these efforts will lead to faster and broader deployment of advanced telecommunications capabilities, an important goal of the 1996 Act. First, there is no reason for regulators to divorce their focus on advanced telecommunications capability from their attention to local competition. The most effective way to accomplish the advanced services goals is to continue to enforce the market-opening measures of the 1996 Act.

Second, we recommend that the Commission actively work to eliminate barriers that blunt the progress of local exchange competition. The Commission can remove a significant impediment to advanced telecommunications capability deployment if it allows telecommunications carriers non-discriminatory access to multi-tenant environments (MTEs) where an incumbent carrier already has access. Further, by preempting state and local regulations that bar competition or have the effect of barring competition, the Commission can unshackle certain entities that may possess the resources to serve consumers the market currently neglects.

## **II. CONTINUED COMMISSION ACTION TO ENABLE LOCAL COMPETITION WILL SPUR FURTHER DEPLOYMENT OF ADVANCED TELECOMMUNICATIONS CAPABILITY**

It is a simple but important fact that the progress of advanced telecommunications capability is intertwined with the development of telecommunications competition generally. For example, much of the progress in advanced telecommunications capability deployment is due to the fact that CLECs can deploy their own facilities in conjunction with unbundled network elements (“UNEs”) purchased from ILECs. Without access to these UNEs, many

CLECs would not exist and could not provide this important engine for deployment of advanced features. In other cases, companies are using other competitive services, such as Direct Broadcast Satellite, to deliver advanced telecommunications capability to consumers.<sup>9</sup>

Although CPI believes that deployment of advanced telecommunications capability is reasonable and timely, we believe the Commission should act to spur further investment and deployment of advanced telecommunications capability by accelerating the pace of local competition. We agree with ALTS that the “most effective way for the Commission to encourage further deployment of advanced telecommunications capability is to continue to develop pro-competitive policies and to ensure that all incumbent carriers comply with the market-opening measures of the Act.”<sup>10</sup>

We disagree with US West who advises the Commission to deregulate the ILECs to spur deployment of advanced telecommunications capability.<sup>11</sup> US West suggests that the market opening measures of the 1996 Act deprive ILECs of the incentive to invest and deploy advanced telecommunications capability.<sup>12</sup> We think the opposite is true. Investment by CLECs in advanced telecommunications capabilities has driven the ILECs to deploy services that had, in some cases, been held in abeyance for years.

To continue the progress of advanced telecommunications capability deployment through competition, the Commission must vigorously enforce its rules that spell out the ILECs’ obligations to competitors. It is especially important that, as both incumbents and competitors seek to expand into the market for advanced services, the Commission not permit incumbents to use their near-monopoly over the local loop to gain an unfair advantage in the advanced services

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<sup>9</sup> See Pegasus comments p. 1.

<sup>10</sup> ALTS comments p. 3.

<sup>11</sup> See US West comments p. 5-6.

<sup>12</sup> *Id.*

market. Such dominance will deny consumers the breadth of choices and innovations made possible when multiple providers are able to vie for customers. To promote competition, the Commission must vigorously enforce its loop and sub-loop unbundling rules; we think the Commission's line sharing rules are especially important in this regard and that they will spur much broader deployment of advanced services by carriers and greater adoption by consumers.

Another tool the Commission has to enhance compliance with the provisions of the 1996 Act is its strict application of § 271. We commend the Commission for establishing a high standard in reviewing RBOC § 271 applications and strongly recommend that the Commission maintain its standard. Once again, we must take issue with US West: we strongly disagree with the company's contention, and that of iAdvance, that § 271 and LATA boundaries inhibit deployment of advanced telecommunications capability.<sup>13</sup>

Contrary to the RBOCs' assertion in this proceeding and other fora, enforcement of § 271 is vitally important to the rapid deployment of advanced services. Without incentives provided by §271, we doubt the RBOCs would comply with the Commission's market-opening rules that, as we argued above, are key to advanced services deployment. *Of course* the presence of the RBOCs in interLATA data markets will improve the competitiveness of those markets, *but only after they have fully opened their markets to competition*. For the same reasons, it is important that once an RBOC is permitted to enter interLATA markets, the Commission ensures the company continues to comply with the requirements of § 271.

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<sup>13</sup> US West comments p. 6, iAdvance comments p. 6.

### **III. THE COMMISSION SHOULD ELIMINATE BARRIERS THAT PREVENT, DETER OR DELAY BROADER COMPETITION FOR ALL TELECOMMUNICATIONS SERVICES.**

Despite the Commission's pro-competitive implementation of the 1996 Act, many barriers to competition remain. Collectively, these barriers at least delay competition and sometimes can prohibit some entities from offering telecommunications services. The Commission currently has before it several proceedings where it can act to remove such barriers. CPI urges the Commission to take this action as soon as possible to enable telecommunications competition generally and trigger the further acceleration of advanced telecommunications capability.

The first major barrier to competition the Commission should address is that posed by building owners in multiple tenant environments (MTEs). The Commission is currently considering a rule that will prohibit landlords from discriminating in providing access to their property for telecommunications providers. Without such access, some competitive entrants face an insurmountable barrier to reaching potential customers.

We know that lack of access to MTEs could substantially affect competition in a large portion of the residential telecommunications market. The Commission simply cannot fulfill its duty of opening up the local telecommunications market to competition without requiring nondiscriminatory access to MTEs.

Several parties in this proceeding note the need for nondiscriminatory access to MTEs to reach consumers with advanced telecommunications capability. We agree with the Wireless Communications Alliance, for instance, that building access remains a critical barrier to competition in the last mile.<sup>14</sup> It is obvious that, in order for competitors to provide advanced services, they must be able to extend their networks to reach consumers. For approximately 25%

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<sup>14</sup> Wireless Communications Alliance comments p. 31-33.

of American consumers, their landlord is the gatekeeper, effectively deciding whether they obtain advanced telecommunications capability from the provider of their choice.

In the *Competitive Networks* proceeding,<sup>15</sup> CPI urged the Commission to take several steps to remove this competitive barrier. In response to the *Second NOI*, several parties have likewise requested that the Commission act. We again urge the Commission to use its authority pursuant to § 224, and its plenary and ancillary rulemaking authority, to impose a nondiscriminatory access requirement to allow telecommunications carriers to deploy advanced telecommunications capabilities in MTEs.

Other barriers to local telecommunications competition inhibit deployment of advanced telecommunications capability as well. Although the Commission has used § 253 in previous decisions to preempt state rules that have the effect of limiting competition, it should do more.

For instance, the Commission currently has before it a petition that would preempt a Missouri law forbidding municipally owned utilities from providing telecommunications service.<sup>16</sup> The 1996 Act permits all entities to provide telecommunications service. The Commission should not ignore the possibility that, especially in some underserved areas, municipally owned utilities might provide advanced services faster than other providers. Unless the Commission exercises its preemption authority, however, these companies will not be allowed to compete. CPI agrees with the United Telecom Council that the Commission should make clear that the 1996 Act allows municipally owned utilities to provide telecommunications services, and use its § 253 authority to preempt state rules that prevent municipal utilities from providing telecommunications services.<sup>17</sup>

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<sup>15</sup> *In the Matter of Promotion of Competitive Networks in Local Telecommunications Markets*, WT Docket 99-217, Notice of Proposed Rulemaking, FCC 99-141, rel. July 7, 1999.

<sup>16</sup> See *In the Matter of The Missouri Municipal League, et al*, CC Docket No. 98-122.

<sup>17</sup> See United Telecom Council comments p. 4-5.



Lastly, the Commission should continue to work to streamline its decision making process. Regulatory delay can be just as much of a barrier to competition as a law banning competition. As the pace of innovation and market change increases, so must the Commission's ability to adapt.

#### **IV. CONCLUSION**

Since the market for advanced telecommunications capability is at a nascent stage, the Commission's conclusion that the current pace of deployment is timely and reasonable is itself reasonable. Nonetheless, the Commission must continue to adopt and enforce policies that spur further deployment of these services in a competitive market. It seems clear to us that the Commission can most effectively accelerate the pace of advanced telecommunications capability by accelerating the pace of telecommunications competition generally. This means vigorously enforcing the 1996 Act and knocking down barriers that, by their effect, limit competition for all telecommunications services.

Respectfully submitted,

**COMPETITION POLICY INSTITUTE**

/s/

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Ronald J. Binz, President  
Debra R. Berlyn, Executive Director  
Joshua M. Bobeck, Policy Counsel  
Competition Policy Institute  
1156 15th St., NW Suite 520  
Washington, D.C. 20005

April 4, 2000

**Certificate of Service**

I, \_\_\_\_\_, hereby certify that on this \_\_\_\_\_ day of April, 2000 copies of the foregoing Reply Comments of the Competition Policy Institute were served by electronic filing or by first-class, United States mail, postage prepaid, upon each of the parties listed below.

Signed: \_\_\_\_\_

Magalie Roman Salas, Secretary  
Federal Communications Commission  
Room TW-B-204  
445 12<sup>th</sup> St., SW  
Washington, DC 20554

Douglas Garrett  
AT&T Broadband  
9197 S. Peoria Street  
Englewood, CO 80112

David D. Oxenford  
Bruce D. Jacobs  
Stephen J. Berman  
Shaw Pittman  
2001 Pennsylvania Avenue, NW Suite 400  
Washington, DC 20006  
Counsel to Pegasus Communications Corp.

Jeffrey I. Sheldon, Esq.  
Brett Kilbourne, Esq.  
United Telecom Council  
1140 Connecticut Avenue NW, Suite 1140  
Washington, DC 20036

Theresa K. Gaugler  
Jonathan Askin  
Association for Local Telecommunications  
Services  
888 17<sup>th</sup> Street, NW, Suite 900  
Washington, DC 20006

Paul J. Sinderbrand  
Robert D. Primosch  
Wilkinson Barker Knauer LLP  
2300 N Street NW, Suite 700  
Washington, DC 20037  
Counsel to the Wireless Communications  
Association International

Howard J. Symons  
Tara M. Corvo  
Michelle Mundt  
Ghit Harris-Newton  
Mintz, Levin, Fohn, Ferris, Glovsky and Popeo,  
PC  
701 Pennsylvania Avenue, NW, Suite 900  
Washington, DC 20004  
Counsel to AT&T

Margot Smiley Humphrey  
National Rural Telecom Association  
Koteen & Naftalin LLP  
1150 Connecticut Avenue NW, Suite 1000  
Washington, DC 20036-4104

Mark C. Rosenblum  
Stephen C. Garavito  
Teresa Marrero  
AT&T  
Room 1131M1  
295 North Maple Avenue  
Basking Ridge, NJ 07920

Mike McCurry  
Susan Molinari  
iAdvance  
919 18<sup>th</sup> Street, NW, 9<sup>th</sup> Floor  
Washington, DC 20006

Robert B. McKenna  
Blair Rosenthal  
US West Communications, Inc.  
1020 19<sup>th</sup> Street NW, Suite 700  
Washington, DC 20036

Douglas I. Brandon  
AT&T Wireless Services  
1150 Connecticut Avenue NW  
Washington, DC 20036